United States Department of Labor
Employees' Compensation Appeals Board

J.M., Appellant	)	
and	)	**Docket No. 10-1825**
	)	**Issued: April 5, 2011**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Cleveland, OH, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 1, 2010 appellant, through his attorney, filed a timely appeal from a June 8, 2010 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met his burden to establish that he sustained a recurrence of disability causally related to his accepted September 8, 2009 employment injury.

FACTUAL HISTORY

On September 8, 2009 appellant, then a 44-year-old master transportation security and behavior detection officer, injured his right ankle when his foot snagged on carpet at the

[1] 5 U.S.C. § 8101 *et seq.*

employing establishment. He did not incur any time loss from work. Dr. Francine Terry, a Board-certified family practitioner, diagnosed right ankle sprain in a September 8, 2009 report. She placed appellant on restricted duties from September 9 to 23, 2009. The Office accepted his claim for right ankle sprain on October 16, 2009.

In October 14, 2009 emergency physician reports bearing illegible signatures, appellant related that he twisted his right ankle at his residence that night while bringing in trash cans. He was recently on light duty due to his September 8, 2009 injury. On physical examination, appellant exhibited tenderness, edema and limited range of motion (ROM). He was diagnosed as having a right ankle sprain and placed indefinitely on restricted duty. A right ankle x-ray did not reveal a fracture or any apparent distress. A nurse added in an October 14, 2009 medical note that appellant had been released to regular duty on September 23, 2009 and previously underwent surgery for his right ankle in 1979.

In a November 6, 2009 progress note, Dr. David B. Kay, a Board-certified orthopedic surgeon, advised that appellant presented with right ankle discomfort. On examination, he observed swelling and tenderness of the peroneal tendons and medial talar dome. Dr. Kay diagnosed severe right ankle sprain, possible osteochondritis dissecans of the talus bone and either tearing or intrasheath subluxation of the peroneal tendons. He recommended ankle support and rehabilitation.

Appellant filed a notice of recurrence on November 10, 2009 alleging that he was walking on a flat surface to remove empty garbage cans on October 14, 2009 when his right ankle unexpectedly gave way and rolled. He described the incident as "a lot more painful and disabling. The swelling was a lot more severe and I could not place my foot on the ground without extreme pain." Appellant requested coverage of his medical treatment. He stopped work on October 15, 2009 and returned on October 19, 2009. The employing establishment stated that appellant's light duty, following the original injury, ended on September 23, 2009. The employer noted that he was currently performing light duty.

By decision dated December 3, 2009, the Office denied the claim, finding the evidence insufficient to establish that the claimed recurrence on October 14, 2009 resulted from the accepted September 8, 2009 work injury.

After issuance of the December 3, 2009 decision, the Office received physical therapy and rehabilitation notes for the period November 12, 2009 to January 28, 2010 and medical records pertaining to other conditions. In a November 30, 2009 progress note, Dr. Kay listed some improvement in appellant's condition. On physical examination, he observed tenderness of the medial talar dome and calcaneal fibular ligament and advised a magnetic resonance imaging (MRI) scan to evaluate for osteochondritis dissecans of the talus bone. Dr. Kay stated that appellant would be unable to work for a couple of weeks.

Appellant requested a telephonic hearing, which was held on March 22, 2010. At the hearing, he testified that on October 14, 2009 he was "walking down my driveway apron to get some empty garbage cans and my ankle gave out, my right ankle, and it rolled over again like the first injury, but this time I actually felt it. I fell down to the ground." Appellant was subsequently attended by Dr. Kay, placed on restricted duty and prescribed physical therapy. He

underwent a right ankle MRI scan in early 2010 and was scheduled for surgery on April 1, 2010. Appellant added that he had a prior operation on his right ankle approximately 10 years before the September 8, 2009 injury. His attorney confirmed with an Office hearing representative that the record did not contain a medical report addressing the causal relationship of the claimed recurrent condition.

By decision dated June 8, 2010, an Office hearing representative affirmed the December 3, 2009 decision.

LEGAL PRECEDENT

A recurrence of disability means "an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."[2]

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which he claims compensation is causally related to the accepted injury. This burden of proof requires that an employee furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.[3] Where no rationale is present, the medical evidence is of diminished probative value.[4] While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.[5]

ANALYSIS

The Office accepted that appellant sustained a right ankle sprain at work on September 8, 2009. The record shows that he worked light duty until he was released to regular duty on September 23, 2009. Appellant claims that he sustained a recurrence of his right ankle sprain on October 14, 2009 when his ankle rolled as he was walking down his driveway at home to retrieve garbage cans. The Board finds that he has not submitted sufficient medical evidence to establish that his claimed recurrence on October 14, 2009 was caused by a spontaneous change in his previous accepted injury and was not the result of an intervening injury.

[2] 20 C.F.R. § 10.5(x).

[3] *Ronald A. Eldridge*, 53 ECAB 218 (2001).

[4] *Mary A. Ceglia*, 55 ECAB 626, 629 (2004); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

[5] *Ricky S. Storms*, 52 ECAB 349 (2001).

Dr. Kay diagnosed right ankle sprain and possible osteochondritis dissecans of the talus bone and either tearing or intrasheath subluxation of the peroneal tendons in November 6 and 30, 2009 progress notes. He did not offer any opinion as to how appellant's condition was connected to the September 8, 2009 injury.[6] Medical evidence of bridging symptoms must address how the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.[7] Dr. Kay also did not address whether the rolling of appellant's ankle on October 14, 2009 while retrieving garbage cans at home represented an intervening injury. The need for rationalized medical opinion evidence is important since the evidence indicates that appellant underwent right ankle surgeries in 1979 and 1999. The claimed recurrence occurred at home while he was retrieving garbage cans. There is no medical evidence explaining how the claimed recurrence on October 14, 2009 was caused by a spontaneous change in his accepted right ankle sprain and not the result of an intervening injury sustained while retrieving garbage cans. As Dr. Kay failed to adequately address causal relationship, his notes were of diminished probative value.

The remaining treatment records do not constitute competent medical evidence. Emergency physician reports dated October 14, 2009, which contained appellant's history of injury and diagnosis, bore illegible signatures. The Board has held that medical reports lacking proper identification do not constitute probative medical evidence.[8] Finally, nursing and physical therapy notes for the period October 14, 2009 to January 28, 2010 lack probative value because neither nurses nor physical therapists are considered physicians under the Act.[9]

Appellant argues on appeal that the Office hearing representative's June 8, 2010 decision was contrary to law and fact. As noted above, the medical evidence was insufficient to demonstrate that the claimed October 14, 2009 recurrence was causally related to the accepted September 8, 2009 employment injury.

CONCLUSION

The Board finds that appellant did not establish that he sustained a recurrence of disability causally related to his accepted September 8, 2009 employment injury.

[6] *See J.F.*, Docket No. 09-1061 (issued November 17, 2009) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[7] *See supra* note 5.

[8] *R.M.*, 59 ECAB 690, 693 (2008).

[9] 5 U.S.C. § 8101(2); *David P. Sawchuk*, 57 ECAB 316 (2006).

ORDER

IT IS HEREBY ORDERED THAT the June 8, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 5, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board